

MEMORANDUM

To: Presiding Judges of the Superior Court (*by e-mail*)
Chief Judges of Tribal Courts
Clerks of Superior Court (*by e-mail*)
County Bar Association Presidents
Civil Practice and Procedure Committee of the State Bar of Arizona
Tribal Attorneys
Indian Law Section of the State Bar of Arizona (*by e-mail*)
Indian legal Aid Programs
ASU Indian Legal Clinic

From: Hon. Patrick Irvine, Chair, State Tribal and Federal Court Forum

Date: March 15, 2006

Re: Service of State Process on Indian Reservations

The Arizona State, Tribal, and Federal Court Forum is considering proposing the attached amendment to Rule 4.1 of the Rules of Civil Procedure. This amendment would expressly authorize use of methods of service of process (including certified mail) currently authorized for service out of state to serve process on Indian reservations within the state. It would codify the ruling in Dixon v. Picopa Const. Co., 160 Ariz. 251, 772 P.2d 1104 (1989) that such service is consistent with due process and tribal sovereignty.

The proposed amendment would place in the rules an express alternative to personal service by state authorized process servers on Indian reservations. The goal of this proposed rule amendment is to alert practitioners of this option in order to reduce the potential for conflict between state authorized process servers and tribal officials regarding personal service on an Indian reservation. This is consistent with the concurrence in State v. Zaman, 194 Ariz. 442, 984 P.2d 528 (1999) in which Justice Jones stated, "In the interest of the state's relationship with the tribes, litigants are encouraged to use such alternative methods whenever and wherever reasonably feasible in order to avoid the unnecessary presence of county law enforcement officers in Indian country and the potential for conflict which may arise from such presence. As a courtesy, the tribes deserve the cooperation of the state in these civil matters."

Please send any comments or suggestions you may have concerning this proposed rule to David Withey, Chief Counsel, Administrative Office of the Courts, 1501 W. Washington, Phoenix, Arizona 85007 or to dwithey@courts.az.gov. Comments received by April 14, 2006 will be considered at the April 28, 2006 meeting of the Court Forum.

End of document.

Rule 4.1(p) New

Service of Summons Within Arizona Indian Country

Service upon any party located within Indian country, as defined in 18 U.S.C. § 1151, within the state may be made using the provisions of Rule 4.2(b)-(h). For this purpose, Indian Country shall be treated as an out-of-state jurisdiction.

COMMENT

This subdivision clarifies that methods of serving process that are allowed for out-of-state service may be used on Indian reservations within the state. This rule codifies the ruling in *Dixon v. Picopa Const. Co.*, 160 Ariz. 251, 772 P.2d 1104 (1989), seeks to minimize disputes concerning the scope of state power to personally serve process on reservations, and provides a valid means of service that does not depend on whether the person to be served is an Indian. See *State v. Zaman*, 194 Ariz. 442, 984 P.2d 528 (1999); *Francisco v. State*, 113 Ariz. 427, 556 P.2d 1 (1976).



GILA RIVER INDIAN COMMUNITY

SACATON, AZ 85247

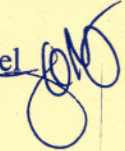
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MEMORANDUM

TO: Hon. Patrick Irvine, Chair, State Tribal and Federal Court Forum

FROM: Jennifer K. Giff, General Counsel 
Gila River Indian Community

DATE: April 12, 2006

RE: Proposed Rule Regarding Service of State Process within Indian Reservations

The Gila River Indian Community (the "Community") received your March 15, 2006 memorandum for a proposed amendment to Rule 4.1 of the Arizona Rules of Civil Procedure. Please review our comments about the proposed rule change and its affect on the Community's law and process.

The Community has its own Rules of Civil Procedure regarding service of civil complaints. The Community's Law and Order Code states that,

[a] summons issued by any court within the United States may be served within the Reservation by a process server appointed by the Community Court. Any person wishing to have such a summons served within the Reservation shall file the summons and complaint with the Community Court, along with a filing fee to be set by the court. If the summons is valid on its face, the court shall order service to be made by the Community law enforcement officials or by some other person designated by the court and the expense thereof will be charged to the party seeking service.¹

Accordingly, the Community asserts its sovereign authority to domesticate service of process within the Gila River Indian Reservation (the "Reservation") insofar as personal or direct service is concerned. We do believe that the Community's law and process of these summons is effective. Indeed, current Arizona case law recognizes tribal jurisdiction and defers to tribal law. In *Francisco v. State*, 113 Ariz. 427, 556 P.2d 1 (1976) the Arizona court flatly rejected the proposition that a state official (in *Francisco*, a deputy sheriff) could serve process on an Indian

¹ Gila River Indian Community Law And Order Code, Title I Chapter 1.301 (C) "Service Of Process".

while on the reservation.² The *Zaman* case notes that the key issue regarding service on-reservation is whether the person to be served is an Indian: “[f]or on-reservation activities, the status of the defendant as an Indian or non-Indian is the *sine qua non* of federal Indian law.”³

Although the proposed rule endorses the holdings of *Francisco*, *Picopa*, and *Zaman* with respect to alternate forms of service, complete incorporation of Arizona’s existing “Long Arm” provisions would permit direct civil service to Community residents in disregard of Community law and Arizona case precedent.

² “It is our opinion that Arizona has no authority to extend the application of its laws to an Indian reservation. We therefore hold that the deputy sheriff was without authority to validly make the service of process while within the boundaries of the Indian reservation.” *Francisco*, 113 Ariz. 427 at 431, 556 P.2d 1 at 5.

³ *Zaman*, 194 Ariz. at 442, 984 P. 2d at 528.

Martinez, Angela

From: Duber, Robert [RDuber@Courts.sp.state.az.us]
Sent: Friday, March 17, 2006 4:51 PM
To: Withey, David
Subject: FW: Memo from Hon. Patrick Irvine
Follow Up Flag: Follow up
Flag Status: Flagged

The memo said to pass comments on to you, so here is mine. I like the idea of codifying the process for service on the reservation. I do not like the language: "For this purpose, Indian Country shall be treated as an out-of-state jurisdiction." because it might be construed as weakening any benefits which flow to the Courts from *Nevada v. Hicks* case might permit.

-----Original Message-----

From: Feldman, Stacey [mailto:SFeldman@courts.az.gov]
Sent: Friday, March 17, 2006 1:49 PM
To: Presiding Superior Court Judges; Superior Court Clerks
Cc: Withey, David
Subject: Memo from Hon. Patrick Irvine

Please see the attached memo and document from the Honorable Patrick Irvine.

4/27/2006

Withey, David

From: Betsy Lynn Snow [betsylynn@frontiernet.net]
Sent: Tuesday, March 28, 2006 12:34 PM
To: Withey, David
Subject: Service of Process on Indian Reservations

Dear David: In response to the recent memorandum by the Honorable Patrick Irvine, Chair of the State, Tribal and Federal Court Forum dated March 15, 2006, I would like to respond as follows.

I think the proposed amendment to Rule 4.1 is long overdue. We on the Navajo Nation use certified mail exclusively when we serve off-Reservation litigants such as federal agencies, the U.S. Attorney in Phoenix and the Attorney General of the United States. We also use it within the Reservation to notify our own clients because as you probably know, there is no at-home mail delivery. In most instances we send our certified mail correspondence restricted delivery, and for the most part, the Post Office follows our request and refuses to allow other family members to sign the restricted correspondence.

When I worked at the State of Arizona Attorney General's Office in Flagstaff from 1996-1998 collecting child support in seven Arizona counties, serving defendants on the reservations was a huge problem. Management in Phoenix would often refuse to prosecute a reservation case despite the ability to hire a NN process server, because of the expense. There will be no excuse now.

It is difficult and costly to serve process in person on the Reservation, even when licensed process servers are used due to the miles travelled and the impact of weather on clay covered roads (and hence their impassibility during winter and summer monsoons). High unemployment also means that individuals must be served at home, rather than more reliably at work.

Thank you for the opportunity to comment on this very important topic.

Betsy Snow, Navajo-Hopi Legal Services Program
Post Office Box 2990
Tuba City, Arizona 86045

4/21/2006